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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,476	10/15/2003	James Timothy Stolzer	PTG 02-18-3	6646
23531	7590	11/21/2005	EXAMINER	
SUITER WEST SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			PRONE, JASON D	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/686,476

Applicant(s)

STOLZER, JAMES TIMOTHY

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,15,17,24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,10-14 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 4,8,16 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Vold (3,083,744).

Vold discloses the same invention including an adjustable retention member for providing work piece positioning (31), a securing mechanism connected to the retention member and being constructive for securing the retention member in a desired orientation (29), that the retention member is capable of pivotally obtaining an extended orientation (Fig. 4) and a retracted orientation (Fig. 5), and a friction lock for locking the retention member in a desired position (33).

3. Claims 3, 5, 6, 11-14, 18, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Windstrup (4,423,860).

**Claims 3, 5, and 6:**

In regards to claim 3, Windstrup discloses the same invention including an adjustable positioning device (40), a retention member connected to the adjustable positioning device (20), a securing mechanism connected to the retention member for securing the retention member in a desired orientation (35 and 44), and the retention

member is capable of pivotally obtaining an extended orientation and a retracted orientation (Fig. 7).

In regards to claim 5, Windstrup discloses the adjustable positioning device is a threaded rod (40).

In regards to claim 6, Windstrup discloses the retention member includes an aperture (22) with segmented threads for pivotally engaging the threaded rod (42 and 44).

Claims 11-14, and 18:

In regards to claim 11, Windstrup discloses the same invention including a housing (12) including a recess (Fig. 2), an adjustable positioning device disposed in the housing (40), a retention member connected to the adjustable positioning device (20), the retention member is configured to pivotally obtain an extended orientation and a retracted orientation (Fig. 7), a securing mechanism connected to the retention member for securing the retention member in a retracted orientation (35 and 40), and the retention member is capable of pivotally extending exterior to the housing and retracting into the housing recess (Fig. 7).

In regards to claim 12, Windstrup discloses an attachment device connected to the housing for attaching the apparatus to a deck (3).

In regards to claim 13, Windstrup discloses the adjustable positioning device is a threaded rod (40).

In regards to claim 14, Windstrup discloses the retention member includes an aperture (22) with segmented threads for engaging the threaded rod (42 and 44).

In regards to claim 18, Windstrup discloses the housing is capable of being included in a work deck (12).

Claims 20-23:

In regards to claim 20, Windstrup discloses the same invention including a means for adjustable positioning (40), a means for retaining a work piece in a desired position (20), a means for securing the retaining means in a desired orientation (35 and 44), and the retaining means is capable of obtaining an extended orientation and a retracted orientation (Fig. 7).

In regards to claim 21, Windstrup discloses the adjustable positioning means is a threaded rod (40).

In regards to claim 22, Windstrup discloses the retaining means is adjustably connected to the adjustable positioning means (Fig. 7).

In regards to claim 23, Windstrup discloses wherein the retaining means is a cleat (20).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windstrup in view of Chen (5,483,858). Windstrup discloses the invention but fails to disclose the apparatus is integrated with a power tool. Chen teaches that it is old and

well known to integrate a positioning device with a power tool (see Fig. 1). Therefore it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have integrated Windstrup's apparatus with a power tool, as taught by Chen, to allow for a more precise cutting environment.

***Allowable Subject Matter***

6. Claims 4, 8, 16, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 06 September 2005 have been fully considered but they are not persuasive. The Vold reference clearly discloses a retention member capable of pivotally obtaining an extended orientation (Fig. 4) and a retracted orientation (Fig. 5). In order for this retention member to go from the extended position to the retracted position a first pivot motion must be made followed by a sliding motion. On page 8 lines 2-3 of the current Remarks section, applicant admits that item 31 pivots. Without item 29, item 31 could not be secured in the position shown in Figure 5. Applicant has not disclosed specifics about what the "desired orientation" is; therefore, any orientation can be considered a desired orientation. In this case, the desired orientation is shown in Figure 5.

Windstrup clearly discloses a retention member capable of pivotally obtaining an extended orientation and a substantially retracted orientation as shown in Figure 7. As shown in Figure 7, the apparatus is capable of being stored when item 20 is in the

retracted position. Also, the fact that the retracted position is "for storage" is an intended use of the apparatus. The term orientation is defined as: The direction followed in the course of a trend, movement, or development (Source *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company. Published by Houghton Mifflin Company. All rights reserved*). Once again the desired orientation has not been disclosed, therefore, any orientation can be a desired orientation. Items 35 and 44, in Figure 7, are shown securing item 20 in the desired orientation or items 35 and 44 allow for item 20 to move in along item 40 which would be the direction followed in the course of movement. In this case the desired orientation is the flat or retracted position. This position is also represents an angular orientation due to 0° being an angle. Pivotal securing is not claimed and is not a relevant argument. In Figure 7, ghost 20 is clearly retracting into the housing/deck as shown by solid 20. On page 11 of the remarks, applicant argues that the Office fails to identify what structure is considered the securing mechanism. The Office action clearly disclosed that the retention mechanism is items 35 and 44. Applicant even admits, on lines 3-4 of page 9 of the remarks section, that the Office now recites items 35 and 44 as the securing mechanism. Windstrup clearly discloses a housing (12) that is included in a work deck (the entire apparatus 1). It is not defined what the work deck is and therefore, Windstrup's entire clamp structure is considered the work deck.

### **Conclusion**

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



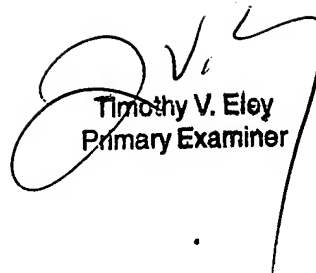
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November 16, 2005



Timothy V. Eley  
Primary Examiner